Special Needs Trusts and ABLE Accounts

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Legal Disclaimer

This presentation should not be construed as legal advice for any particular set of circumstances. Please visit with a licensed attorney to discuss your personal situation.

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Special Needs Trust is a trust for the benefit of an individual with disabilities

ABLE Account is a tax-advantaged savings account for an individual who was disabled before age 26 (age 46 after 2026)

Non-countable assets when determining eligibility for government benefits

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ABLE ACCOUNTS

The Stephen J. Beck, Jr.
Achieving a **B**etter **L**ife **E**xperience Act (2014)

Provides for tax-advantaged **ONLINE** savings accounts for individuals **disabled before age 26** (age 46 after 2026).

Tax-free growth and tax-free disbursements for qualified disability expenses.

Excluded as resource (limited amount of funds) for needs-based government benefits.

49 ABLE plans nationwide – state residency required for some plans.

Some states allow for state income tax deductions for contributions made to an ABLE account (N/A for Texas).

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Eligibility for ABLE Account

- Blind or disabled prior to the age of 26.
  (Can be over age 26 when opening account, as long as disability occurred prior to 26.)
- Blind or disabled prior to the age of 46 after January 1, 2026.
- If age criteria is met AND individual is already receiving SSI and/or SSDI benefits = automatically eligible
- If individual is NOT receiving SSI or SSDI benefits:
  - Meet SSA's definition of disability; and
  - Have copy of diagnosis available upon request.

Texas ABLE Account requires beneficiary to be Texas resident.

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§1382c(a)(3)
SSA Definition of Disability for Adult

Unable to engage in any **substantial gainful activity**

by reason of medically determinable physical or mental impairment that is expected to result in death or last at least 12 months

$1,620/month (2025) - non-blind individual
$2,700/month - statutorily blind individual

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ABLE Account Owner & Manager

Beneficiary is **account owner.**

Beneficiary or Authorized Legal Representative manages account.

Authorized Legal Representative:

- Legal Guardian
- Power of attorney agent
- Conservator
- Spouse
- Parent
- Sibling
- Grandparent
- Representative payee (or organization that employs rep payee)

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ABLE Account Limits (2025)

$19,000 annual contribution limit

(tied to IRS annual gift tax exclusion amount)

+ additional $15,060 in wages earned by the individual with disabilities

ONLY ONE ABLE ACCOUNT PER BENEFICIARY

Contributions can be made by anyone (beneficiary, family members, friends, trustee of special needs trust, etc.) and **must be made in cash**.

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Rollovers from 529 College Savings Accounts into ABLE Accounts

- Families that have a 529 College Savings Plan (529C) can transfer the monies to an ABLE Account (529A) without incurring a penalty.
- The rollover can be in amounts up to the annual ABLE contribution limit.
- Both accounts must have the same beneficiary or be a qualified member of the beneficiary's family.

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ABLE Account Balance Limits

$100,000 balance limit for SSI recipients

If SSI recipient's ABLE account goes over $100K, SSI benefit is suspended until the account is spent down below $100K. Does not affect Medicaid.

State limits for Medicaid-only recipients

($235,000 to $550,000 range)

$500,000 limit for Texas

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Medicaid Payback

ABLE account requires a Medicaid payback (reimbursement/recapture) in most states.

- Medicaid payback only affects Medicaid benefits received after the ABLE account is established.
- Outstanding QDE's (which may include funeral and burial expenses) can be paid before Medicaid reimbursement.
- You cannot avoid a Medicaid payback by establishing ABLE account in another state.

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ABLE Account funds used for
Qualified Disability Expenses (QDE's)

"that relate to the individual's disability and are for the benefit of maintaining or improving health, independence or quality of life."

This may include education, food, housing, transportation, employment training and support, assistive technology, personal support services, health care expenses, financial management, legal and administrative services, etc.

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Non-Qualified Fund Withdrawal

- Withdrawals are not counted as income to the designated beneficiary but could be considered an asset if not spent for **Qualified Disability Expenses.**
- Withdrawals for housing expenses must be spent in the month the withdrawal is received or it will be considered an asset.
- Non-qualified fund withdrawal subject to federal income taxation and additional 10% tax in most circumstances.

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Withdrawals from ABLE Account
(online process)

Transfer to personal checking or savings accounts.

Request paper check (7-10 days).
Electronic fund transfer (3-5 days).

Pay bills directly from online account.

Request prepaid debit cards at time of enrollment or later. Funds can be transferred to the card via online account and can typically be used everywhere VISA debit cards are accepted.

ABLE Account can encourage beneficiary independence.

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ABLE and ISM

- **In-kind Support and Maintenance ("ISM") =** shelter expenses that are being provided for SSI recipient.
- If a trust or third party pays for rent, mortgage, or utilities, SSA reduces the amount of the SSI benefit by approximately $322 per month (in 2025) depending on the type and value of assistance received.
- POMS SI 00835.465 identifies **9 items** which count as ISM: mortgage, real property taxes, rent, heating fuel, gas, electricity, water, sewer, and garbage removal. (Food removed from list effective September 30, 2024).

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Fair Share Exception

- One way to avoid ISM penalty is to have SSI recipient pay **fair share** of household expenses.
- Funds contributed to ABLE account (from any source) belong to the account owner/ beneficiary and can be used to pay fair share of expenses when SSI recipient cannot cover fair share of expenses from own payments (and chooses not to use lease agreement).

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ABLE/ISM Example

Angela lives with parents. "Fair share" = $1,000 per month.
- $600 SSI payment to parents each month
- $400 paid to parents from ABLE account

Result:

Angela avoids ISM charge and receives maximum SSI.

**Must report fair share arrangement to SSA with supporting paperwork. Be prepared to provide monthly ABLE account and bank account statements for SSI eligibility reviews.*

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Closing an ABLE Account

- When the account owner dies, the funds in the account can be used for qualified disability expenses such as funeral and burial (before Medicaid payback).
- Medicaid payback is reduced by amount of premiums paid for Medicaid Buy-in program.
- The remaining funds (after the Medicaid payback), if any, go to a successor designated beneficiary or to the beneficiary's estate.

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Reasons to Consider Special Needs Trust

- **Will your loved one with disabilities need assistance managing money or property in the future?**
- **Are you concerned about eligibility for means-tested government benefits?** (SSI, Medicaid waiver programs, Medicare savings programs, prescription assistance, SNAP benefits, housing assistance, etc.)
- **Will a special needs trust be a better option than an ABLE account?** (Desire to avoid Medicaid payback, inheritance expected to exceed contribution limits, non-cash assets need management, beneficiary needs more oversight, etc.)

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RESOURCE EXCLUSIONS For Many Needs-Based Government Programs

- First $2,000 ($3,000 if married couple)
- Homestead Property
- One vehicle
- Household goods and personal effects
- Life insurance with face value less than $1,500
- Pre-paid Funeral or Burial Plot
- Burial fund worth up to $1,500
- Retroactive SSI or SSDI payments for 9 months
- **Special Needs Trust**
- **ABLE Account** ($100,000 limit for SSI eligibility)

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Arrangements NOT Recommended

- Disinheritance – no money available for loved one with special needs
- Leaving assets to brothers or sisters with request to take care of sibling
  - Funds become part of sibling's estate upon death
  - Assets could be lost in divorce
  - Money is subject to sibling's creditors
  - Sibling may choose to use funds for own family

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What is a TRUST?

Legal arrangement where **TRUSTEE** holds title to assets that are used for the **benefit of a BENEFICIARY.**

SETTLOR (Grantor/Trustmaker) establishes rules of trust and **TRUSTEE** agrees to manage trust assets according to terms of trust agreement.

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Special Needs Trust

- Beneficiary is **disabled** (physically or mentally).
- **Beneficiary control is restricted.**
- **Stated purpose is to "supplement and not supplant" government benefits – NOT a support trust.**

The only kind of trust that is not a countable resource for SSI and Medicaid is a SPECIAL NEEDS TRUST.

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2 Types of Special Needs Trusts

First-Party SNT:
Funded with assets that belong to beneficiary
(Medicaid payback)

Third-Party SNT:
Funded with assets belonging to anyone other than the beneficiary
(No Medicaid payback)

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Third-party Special Needs Trust

Created & funded by any third party

(typically established as part of estate plan)

Trust Assets:

- Cash, securities, business interests, real estate, etc. **(anything that does not belong to beneficiary)**
- No funding limits
- Trust can be beneficiary under will or another trust
- Trust can be payable-on-death beneficiary of bank or brokerage account, retirement account, life insurance policy, etc.

Eligibility:

Beneficiary with disabilities

Settlor(s) of trust decide where assets go upon beneficiary's death

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Third-Party SNT Options

Stand-alone or Living trust	Testamentary Trust	Sub-trust or Beneficiary Trust
Revocable or irrevocable	*Created at time of death pursuant to terms of Will*	*Created pursuant to terms of another trust*

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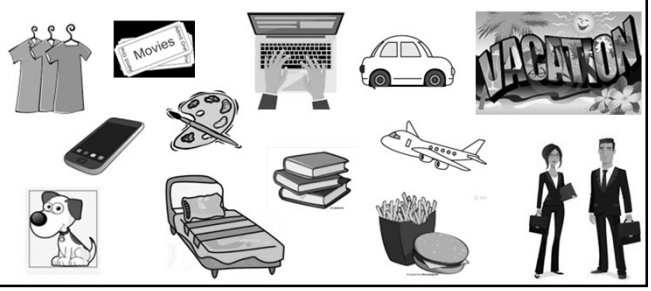
Unless limited by specific trust terms, a special needs trust can pay for basically anything that is in the beneficiary's interest.



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Can a special needs trust pay for FOOD and SHELTER?

Food: YES, unless prohibited by trust agreement. Effective 9/30/24, food is no longer included as ISM.

SHELTER: YES, unless prohibited by trust agreement, **but trust distributions for shelter expenses will reduce (but usually not eliminate) SSI payments.**

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Trust Distributions – SSI Income

Trust principal is not a resource, but disbursements from the trust may be income to the SSI applicant or recipient, depending on the nature of the disbursement. POMS SI 01120.200E.1.

- **Cash paid directly from the trust to the individual is unearned income.**
- Disbursements for shelter expenses to a beneficiary receiving SSI is in-kind support and maintenance (ISM) income. POMS SI 00835.001 & 00835.465.
- Disbursements from the trust to third parties that result in the beneficiary receiving non-cash items (other than shelter) are in-kind income if the items would not be excluded resources if retained into the following month. (Example: Purchase of second vehicle.) POMS SI 01120.200E.1.a.

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Distributions that are NOT Income

Disbursements from the trust to a third party are not income to the trust beneficiary, unless they are considered income under POMS SI 01120.200E.1.a. & 01120.200E.1.b.

Disbursements made from the trust to a third party that result in the beneficiary's receiving non-cash items (other than shelter-related expenses) are not income if those cash items would become an excluded resource if retained into the following month. (Example: Purchase of computer.) POMS SI 01120.200E.1.a.

Disbursements that are bona fide loans are not income. POMS SI 01120.200E.1.a. & 00815.350.

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Third-party special needs trusts cannot hold property that already belongs to the trust beneficiary.

What happens if the special needs trust is not the designated beneficiary of life insurance funds, retirement account, investment account or other property inherited under will or living trust?

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WILL/TRUST MODIFICATION OR REFORMATION

- In Texas (not all states), it is possible to modify or reform a WILL or TRUST beneficiary to be a third-party special needs trust if the purpose is to preserve eligibility for needs-based government benefits.
- Modification/reformation requires court approval (which means attorney's fees).

It is not possible to add or modify a designated beneficiary of a life insurance policy, retirement account, checking/savings/investment account, or inheritance received from person who died without a will.

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First-party Special Needs Trust

Created by parent, grandparent, guardian, court or competent beneficiary

42 U.S.C. § 1396p(d)(4)(A)

Eligibility:

- Disabled beneficiary **under the age of 65**

Trust Assets (unlimited amount):

- Property owned by beneficiary including bank account funds, stock, real estate, personal injury award, divorce settlement, inheritance funds not directed to third-party SNT.
- Income required by law to be assigned to first-party SNT including child support for disabled adult child and military survivor benefits.

Remaining Funds: Medicaid payback!

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Estate Planning is Critical for Families with Special Needs Child

- Establish (or update) Will to have property gifted to third-party special needs trust.

- Change (or add) designated beneficiaries on bank accounts, retirement accounts, life insurance policies, etc.

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Child Support for Disabled Adult Child

Lifetime child support (allowed in Texas) can be irrevocably assigned to a first-party special needs trust by court order.

Child support should not be paid to an ABLE account – still considered income to the beneficiary.

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Military Survivor Benefits

Disabled Military Child Protection Act

- SBP annuity payments can be assigned to a first-party special needs trust.
- Military requires affidavit of specialization from attorney.
- If not assigned to SNT, monthly SBP payment is unearned income to beneficiary and unspent funds on first day of following month is counted as a resource (asset).

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Exceptions to Over-65 Additions

POMS SI 01120.203 and 01120.201.J.1.e

- Additions to a first-party SNT after age 65 may count as income to the beneficiary, depending on the source of the funds, and may count as resources in the following months under regular SSI trust rules.
- Additions do not include interest, dividends, or other earnings of the trust. Payments from an annuity, support payments, or Survivor Benefit Plan (SBP) payments that were irrevocably assigned to the trust before the beneficiary was age 65 are also not included.

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Income Not Assignable to Special Needs Trust

SSA POMS SI 01120.200.G.1.c – Payments not assignable by law:

- **Social Security Title II and SSI payments**;
- Temporary Assistance to Needy Families (TANF)/Aid to Families with Dependent Children (AFDC);
- Railroad Retirement Board-administered pensions;
- Veterans' pensions and assistance;
- Federal employee retirement payments (CSRS, FERS) administered by the Office of Personnel Management;
- Private pensions under the Employee Retirement Income Security Act (ERISA) 29 U.S.C.A., Section 1056(d).

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Choosing a Trustee

- Parent(s)
- Sibling(s)
- Close friend(s)
- Corporate Trustee
- Pooled Trust

NOT SNT BENEFICIARY!

SNT Trustee is NOT a Guardian (but may avoid guardianship of estate).

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Family Member as Trustee

Family member trustee usually receives low (or no) trustee fees.

Family member has personal relationship with beneficiary – better understanding of needs. *But…*

- Does family member have **desire**, **commitment** and **expertise** to take on responsibility?
- Does family member have time to learn about government benefits and deal with government agencies?
- Does family member have skills/experience necessary to invest money, file tax returns, etc.?
- Could responsibility of determining how to spend trust funds cause conflict with beneficiary or other family members? Will family member be tempted not to spend trust funds to save money for themselves or their children?
- Does family member understand seriousness of property trust administration? *(Siblings are the worst offenders for messing up SNT administration.)*
- Are successor trustee(s) available?

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Corporate Trustee

- Corporate trustees provide trust management expertise and trustee continuity.
- Some court-created trusts require corporate trustee.
- Sometimes corporate trustee is best option to safeguard funds and alleviate burden on family members.
- Trust protector/advisor can be appointed to keep family members involved.
- Corporate trustee fees typically range from 1.2% - 1.5% annually.
- Most corporate trustees that are willing to accept special needs trusts require very significant trust funding (typically $500,000 - $1 million).
- Disbursements from trust may take time to process (although budget can be arranged).

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POOLED SPECIAL NEEDS TRUST

- First-party or third-party SNT that is managed by non-profit organization.
- Individual beneficiaries have separate sub-accounts.
- Assets from multiple beneficiaries are pooled together for purposes of investment and management of funds.
- **Only cash assets accepted for most pooled trusts.**

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Advantages of Pooled Trust Sub-accounts

- **Minimal funding** usually allowed - great alternative when SNT is uneconomical (or becomes uneconomical) to administer.
- Pooled trusts have already been **reviewed and approved by SSA** and other agencies so there is no delayed eligibility waiting for trust review.
- Most pooled trusts are **managed by known and trusted organizations** that understand trust laws, government programs designed to help people with special needs, and impact of trust disbursements on various needs-based government benefits.

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Advantages of Pooled Trust Sub-accounts
…continued

- Most pooled trusts have **simple and prompt disbursement procedures** that allow individuals and their families to stay involved.
- A third-party **neutral trustee** can avoid conflict in families where there may be disagreements over the use of trust funds.
- In many states, **funds can be retained by non-profit agency** in place of Medicaid reimbursement.

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Special Needs Trust Benefits

- Eligibility for needs-based government programs.
- Allows for supplemental funds to enhance quality of life.
- Assistance with money management and/or property management.
- Protection against misuse, exploitation and creditors.

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Reporting Trust to SSA

- **Report changes to SSA** by 10th day of month following change. This includes trust funding.
- Trust will be reviewed by Special Needs Trust Review Team.
- Use SSA appeal process if needed to have trust assets determined to be uncountable.

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Comparison: Special Needs Trusts & ABLE Accounts

Eligibility
- SNT - disabled beneficiary of any age
- ABLE - disabled before age 26 (age 46 in 2026)

Assets
- SNT - no limits on type & amount of asset (as long as trustee agrees)
- ABLE – yearly and total limits and can only fund with cash assets

Medicaid Payback
- No payback with third-party SNT
- First-party SNT payback – Medicaid benefits received over lifetime
- ABLE account payback – Medicaid received after account established

Taxes
- Tax-free growth only with ABLE
- Some states offer limited **state income tax** deduction for ABLE contributions

Cost
- SNT – Legal fees to establish trust and administrative fees in some cases
- ABLE – No attorney assistance needed; minimal maintenance fees

Limit on number of accounts
- ABLE - Only one account per beneficiary
- SNT - No limit on number (or different types) of trusts

Use ABLE and SNT(s) together!

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